

5

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: Community Development

Council Meeting Date: 12/6/2012

Department Contact: Ken Benion

Phone # 5427

Contract or Agreement: Agreement

Document Name: Fourth Modification CDBG Loan - City of Huntsville and Spring Branch Ltd.

City Obligation Amount: 0.00

Total Project Budget: 0.00

Uncommitted Account Balance: 0.00




Account Number: NA

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
-----------------------	-----------------------

Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
-----------------------	-------------

Department	Signature	Date
1) Originating		12/3/12
2) Legal		12-5-12
3) Finance		12/5
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/6/2012

Action Requested By:
Community
Development

Agenda Item Type
Resolution

Subject Matter:

Resolution to enter into a the Fourth Modification to CDBG Mortgage between The City of Huntsville and Spring Branch Ltd.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into the Fourth Modification to CDBG Mortgage between The City of Huntsville and Spring Branch Ltd.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanlmous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

The agreement will allow NBA to sell and convey the property secured by said mortgages to Spring Branch, Ltd. and make further modifications and improvements to the property for the benefit of those persons in the community in need of adequate affordable housing. It also extends the maturity date to May 15, 2044.

Associated Cost: 0.00

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 12/3/2012

RESOLUTION NO. 12-_____

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and is hereby authorized to enter into the Fourth Modification to CDBG Mortgage by and between the City of Huntsville and Spring Branch Ltd., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Fourth Modification to CDBG Mortgage by and between the City of Huntsville and Spring Branch Ltd.," consisting of four (4) pages, and the date of December 6, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 6th day of December, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 6th day of December, 2012.

Mayor of the City of
Huntsville, Alabama

DOCUMENT PREPARED BY
AND AFTER RECORDED
RETURN TO:

Chad W. Ayres, Esq.
Wilmer & Lee, P.A.
100 Washington Street, Suite 200
Huntsville, Alabama 35801
Telephone: (256)533-0202

FOURTH MODIFICATION TO MORTGAGE

THIS FOURTH MODIFICATION TO MORTGAGE (the "Modification"), is made this ____ day of December, 2012, by and between THE CITY OF HUNTSVILLE, an Alabama municipal corporation (hereinafter "City") and SPRING BRANCH, LTD., an Alabama limited partnership ("Spring Branch").

WITNESSETH:

WHEREAS, on or about the 15th day of December, 1989, Huntsville Housing Developments, Inc., did execute and deliver to the City a Promissory Note whereby it agreed to pay Payee (as defined therein) the sum of THREE HUNDRED NINETY THOUSAND AND NO/100 (\$390,000.00) DOLLARS; and

WHEREAS, said Promissory Note was amended on the 25th day of August, 1993 and on same day therewith, Huntsville Housing Developments, Inc. did transfer and convey to NBA certain property, as same is more particularly described on Exhibit "A" attached hereto and made a part hereof as if set forth in full herein (the "Property") which Property secured said Promissory Note; and

WHEREAS, said Property was originally pledged by Huntsville Housing Developments, Inc. as security for the above described Promissory Note by execution and delivery of a Mortgage which was recorded on December 19, 1989, in Mortgage Book 1653, at Pages 1066-1069, which said Mortgage was thereafter amended by an Amended Mortgage recorded on August 25, 1993, in Mortgage Book 1944, at Pages 321-325, both in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, NBA did thereafter enter into a Modification and Restatement of Promissory Note with the City dated June 1, 1999, setting forth new terms and conditions related to the loan, and did further execute and deliver a Second Amended Mortgage recorded on June 3, 1999, in Mortgage Book 2548, at Page 456-459, in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, NBA did thereafter enter into an additional Modification and Restatement of Promissory Note with the City dated November 17, 2011, setting forth new terms and conditions related to the loan, and did further execute and deliver a Third Modification to Mortgage recorded in Document Number 20111221000697960 (said Second Amended Mortgage and Third Modification to Mortgage, along with the Mortgage and Amended Mortgage heretofore referenced may sometimes hereafter collectively be referred to as the "Mortgage"); and

WHEREAS, NBA has sold the Property to Spring Branch which did assume the above described loan and Spring Branch now desires to further amend the terms and conditions of the above described loan with the City in order to facilitate additional financing as well as address necessary improvements and repairs of the building(s) located upon the Property in order to continue to provide residential dwelling units for individuals and families whose income does not exceed eighty percent (80%) of the Huntsville area median income; and

WHEREAS, it is to the benefit of the City to provide such low income housing and to protect its collateral interest in the Property and the City has therefore agreed to the terms and conditions as set forth above and hereafter.

NOW, THEREFORE, the premises considered, and for good and valuable considerations to both the City and NBA, such considerations being hereby acknowledged, the City and NBA do hereby amend, modify, renew and restate the terms of the Mortgage as follows:

1. AMENDMENT OF MORTGAGE.

A. The principal amount secured by the Mortgage is hereby amended to \$283,190.00.

B. The maturity date of the Mortgage is hereby extended to May 15, 2044.

C. Transfer; Removal; Amendment. Notwithstanding anything to the contrary contained in this Mortgage, the Note or the Other Loan Documents, it shall not constitute an Event of Default under this Mortgage or a default under the Note or any Other Loan Document and the consent of the City is not required, for: (a) the transfer of limited partner interests in Spring Branch to an affiliate of PNC Bank, National Association, or its affiliate and their respective successors and assigns (collectively, "Investor Limited Partner") in accordance with the terms of Spring Branch's partnership agreement, as such partnership agreement may be amended from time to time (the "Partnership Agreement"), (b) the transfer of ownership interests in a limited partner of Spring Branch, so long as the managing member or general partner of such limited partner is an affiliate of Investor Limited Partner, (c) the removal of the general partner of Spring Branch for cause in accordance with the Partnership Agreement by Investor Limited Partner and the replacement of the general partner with Spring Branch's special limited partner or an affiliate of Investor Limited Partner, or (d) an amendment of the Partnership Agreement (i) memorializing the transfers or removal described above or (ii) which does not materially and adversely affect the ability of Spring Branch to perform Spring Branch's obligations under this Mortgage, the Note and the Other Loan Documents.

D. Cure. Investor Limited Partner shall have the right, but not the obligation, to cure any Event of Default by Spring Branch under this Mortgage or any default under the Note or any Other Loan Document, and the City shall accept performance by Investor Limited Partner of any obligation of Spring Branch thereunder as though tendered by Spring Branch itself, provided such performance has occurred during the applicable cure period, if any, provided to Mortgagor thereunder with respect to such default or Event of Default.

E. Notice. The City shall simultaneously deliver to Investor Limited Partner a copy of any notice provided to Spring Branch under this Mortgage or any other Loan Document at the following address: Columbia Housing SLP Corporation, c/o PNC MultiFamily Capital, 121 SW Morrison Street, Suite 1300, Portland, Oregon 97204-3143.

F. Rebuild. Notwithstanding any provision of the Mortgage to the contrary, the City shall not exercise its option to apply insurance or condemnation proceeds to the payment of the indebtedness but shall make such proceeds available for the restoration and repair of the Property if all of the following conditions are met: (a) Spring Branch is not in breach or default of any provision of this Mortgage or any other Loan Document; and (b) the City determines that there will be sufficient funds, through insurance or condemnation proceeds and contributions by Spring Branch, to restore and repair the Property to a condition as close as reasonably possible to what previously existed, due consideration given to any portion of the Property taken through eminent domain or condemnation.

2. CONTINUING VALIDITY.

Except as otherwise modified herein, all terms and provisions of the Mortgage shall remain in full force and effect. It is intended that this Modification shall provide additional security for the City and nothing contained herein shall reduce or extinguish any protection afforded City under the Mortgage, and to the extent that any modification set forth herein does in fact reduce or extinguish any prior protection afforded the City under the Mortgage, then all parties hereto agree that the provision(s) contained within this Modification which cause such a reduction or extinguishment of protection afforded to the City is(are) void and of no effect, but the remainder of the Modification is still in full force and effect.

3. NO OTHER AMENDMENTS TO LOAN DOCUMENTS.

The terms of this Modification shall in no way alter the priority of the liens on the Property created by the Mortgage or any of the other loan documents, and modifications and amendments to the loan documents expressly set forth in this Modification shall (unless otherwise provided herein) relate back to the date of the Mortgage and other loan documents, respectively, with the same effect as if set forth therein when originally executed. Except as otherwise amended herein, the terms and provisions of this Modification shall in no manner impair, limit, restrict or otherwise affect the obligations of NBA to the City as reflected in the loan documents, and the note (or the renewals, extensions or replacements thereof), the Mortgage and all other loan documents remain unmodified, un-amended and in full force and effect and are hereby republished and reconfirmed, as previously amended as referenced above. As amended and modified by this Modification, the Mortgage, the note (or any renewals, extensions or replacements thereof), and the other loan documents are hereby ratified and confirmed and shall continue in full force and effect in accordance with the provisions thereof.

4. RULES OF CONSTRUCTION.

For the purposes of this Modification, except as otherwise expressly provided or unless the context otherwise required: (a) Words of masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number, and vice versa; (b) All paragraph and other subdivision and exhibit caption herein are used for reference only and in no way limit or describe the scope of intent of, or in any way affect, this Modification; (c) The terms "include", "including", and similar terms shall be construed as if followed by the phrase "without being limited to"; (d) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Modification as a whole and not to any particular paragraph, other subdivision or exhibit; (e) All recitals set forth in, and all exhibits to, this Modification are hereby incorporated in this Modification by reference; and (f) No inference in favor of or against any party shall be drawn from the fact that such party or its counsel has drafted any portion.

IN WITNESS WHEREOF, this Modification has been executed by the duly authorized representatives of the parties as of the date first written above.

SPRING BRANCH, LTD.,
an Alabama limited partnership

By: **SPRING BRANCH LLC**
an Alabama limited liability company
Its: **General Partner**

By: Neighborhood Concepts, Inc.
Its: Manager

By: _____
Mary Ellen Judah
Its: Executive Director

CITY OF HUNTSVILLE, ALABAMA, a
municipal corporation within the State of
Alabama

ATTEST: _____
Charles E. Hagood
as Clerk-Treasurer of City Huntsville,
a municipal corporation within the
State of Alabama

By: _____
Tommy Battle
Its: Mayor

STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned Notary Public in and for said County and State hereby certify that Mary Ellen Judah, whose name as Executive Director of Neighborhood Concepts, Inc., an Alabama Corporation acting in its capacity as Manager of Spring Branch LLC, the General Partner of SPRING BRANCH, LTD., an Alabama limited partnership, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, she, as such Executive Director of said corporation acting in its capacity as General Partner of the Limited Partnership, and with full authority to act in such capacity, executed the same voluntarily for and as the act of said corporation acting in its capacity as General Partner of said Limited Partnership.

GIVEN under my hand and official seal this the _____ day of December, 2012.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned Notary Public in and for said County and State hereby certify that TOMMY BATTLE and CHARLES E. HAGOOD, whose names as Mayor and Clerk-Treasurer, respectively, of City of Huntsville, Alabama, a municipal corporation within the state of Alabama, are signed to the foregoing Modification and who are known to me, acknowledged before me on this day that, being informed of the contents of the Modification, they, as such officers and with full authority to act on behalf of such municipal corporation, executed the same voluntarily for and as the act of said municipal corporation.

GIVEN under my hand and official seal this the _____ day of December, 2012.

Notary Public
My Commission Expires: _____